IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3952 OF 2005

1. Amul Uday Acharya.
2. Mrs.Bhavna Uday Acharya. ... Applicants.

Versus.

The State of Maharashtra. ... Respondent.

Shri Nitin Pradhan i/by Ms.S.D.Khot for the Applicants.

Shri K.V.Saste, A.P.P.for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 13th July, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties. This is an application for anticipatory bail filed by the Applicants arising out of C.R.No.44 of 2005 registered with the MIDC Roha Police Station, District Raigad. The Applicants are the Directors of one Roha Paper Mills Pvt.Ltd. The allegation is that after an order was passed on 17th May 2000 in respect of the said company under section 4(1) of the Maharashtra Protection of Interests of Depositors (In Financial Establishments) Act, 1999, large amounts have been withdrawn by the Applicants from a Bank Account of the said Company. The allegation is that the said company was having an account with a branch of Bank of Maharashtra and from the said bank account No.799 withdrawal of about sum of Rs.1.40 crores has been made by the Applicants.

Therefore, offence has been registered under sections 406, 420 read with 34 of the Indian Penal Code. The Application for anticipatory bail made by the Applicant has been rejected by the Sessions Court by order dated 15th June 2005.

2. Shri Pradhan, learned Counsel appearing for the Applicants, has invited my attention to the order dated 17th May 2000 passed by the State Government under section 4(1) of the said Act of 1999 and order dated 17th July 2000 passed by the learned Special Judge under section 7 of the said Act of 1999 and submitted that there was no attachment of the said bank account of the company in question and as business of the company was continued, the Applicants as Directors of the company were entitled to operate the bank account by issuing various cheques. He submitted that by operating the bank account, the Applicants have not committed any breach of the orders dated 17th May 2000 and 17th July 2000. He submitted that the Applicant No.2 is a woman and she is a house-wife. She has nothing to do with the transaction of the company. He submitted that for the alleged breach of orders dated 17th May and 17th July 2000, the Applicants are already facing proceedings under the Contempt of Courts Act, 1971 and therefore, there was no question of registering any offence on the basis of the alleged breach of the order passed under the said Act of 1999.

3. The learned A.P.P. pointed that the investigation made by the Investigating Officer shows that after 17th July 2000 the disbursement of large amounts have been made by the Applicants by operating the said account in the Bank of Maharashtra and the total amount withdrawn is to the tune of Rs.1,52,33,318/-. He submitted that the Investigating Officer, after verifying the record of the Bank, found that the said amounts have been disbursed by cheques signed by the Applicant No.1. He stated that all the amounts which are withdrawn between the period 17th July 2000 to 4th April 2001 are by cheques signed by the Applicant No.1 and the Applicant No.2 has not signed any cheque. He submitted that the cheques have been issued in the name of various parties and therefore, custodial interrogation of the Applicants is absolutely necessary as it is necessary to ascertain where the amounts have gone.

4. I have considered the rival submissions. On a plain reading of section 4 of the said Act of 1999 it appears that the power is vesting in the State Government to attach properties and assets of a financial establishment. Section 7 of the said Act of 1999 empowers the designated Court to confirm the order of attachment made under section 4. Section 10 of the said Act of 1999 empowers the designated Court on an application of any person interested in any property

attached and vested in the Competent Authority to pass such order for providing for such amount from the property attached and vested in the Competent Authority as may be reasonably necessary for the maintenance of the Applicant and of his family, and for expenses connected with the defence of the Applicant where criminal proceedings have been instituted against him. The section authorises the designated Court to pass order for safeguarding the interests of any business affected by the attachment. The order dated 17th May 2000 passed under section 4(1) of the said Act shows that there is an attachment of the property of Roha Paper Mills Pvt.Ltd. By virtue of sub-section (2) of section 4 of the Act of 1999, all the properties and assets of the said company on the date of order passed under section 4(1) forthwith stood vested in the competent authority appointed by the Government. Thus, primafacie the effect of the order dated 17th May 2000 is that all the properties and assets of the Financial Establishment, namely Roha Paper Mills Pvt.Ltd. vested in the Competent Authority. Thus it appears that even the amount in Bank Accounts of the company which forms part of the assets of the said company stood vested in the Competent Authority. By the order dated 17th May 2000 passed under section 4(1) of the said Act of 1999, the Sub-Divisional Officer, Mumbai Suburban District was appointed as the Competent Authority for controlling the assets of the said Company. It will not be out of place

to mention here that in no application as contemplated by section 10 of the said Act of 1999 appears to have been made by the Applicants after attachment was made absolute under the orders of the learned Special Judge passed on 17th July 2000. It appears that a Government nominee was appointed to run the establishment with effect from 10th November 2000.

5. Therefore, primafacie at this stage it appears that the Applicant could not have operated the Bank Account of the establishment with the Bank of Maharashtra at least after 17th May 2000. It is also to be noted here that the Division Bench of this Court by order dated 22nd December 2000 passed in Writ Petition No.4801 of 2000 recorded primafacie satisfaction that large funds of the said establishment have been diverted from the account of the said establishment after the order was passed by the learned Special Judge on 17th July 2000. The contempt petition is still pending for final adjudication.

6. The material produced before me shows that after 17th July 2000 about 29 cheques of the said Bank account have been issued in respect of large amounts under the signature of the Applicant No.1. Thus after the order of attachment was confirmed, a sum of Rs.1.50 crores has been withdrawn/disbursed by the Applicant No.1. In the order of attachment, it is stated that the money of

investors in C.U.Marketing Co. has been utilised in the said Company Roha Paper Mills Pvt.Ltd. The order of attachment was passed, inter alia, for protection of the large number of investors. Considering the fact that such large amount is involved and considering the gravity of the allegations, custodial interrogation of the Applicant No.1 is certainly required.

7. As far as Applicant No.2 is concerned, the learned A.P.P. has fairly stated that the cheques which were issued after 17th July 2000 have not been signed by the Applicant No.2 and that all cheques have been signed by the Applicant No.1. It is not the case that any cheque is issued in favour of the Applicant No.2. The Applicant No.2 is a woman who is stated to be a house-wife. In this view of the matter I am satisfied that so far as Applicant No.2 is concerned, case is made out for grant of anticipatory bail.

8. In view of the above, the following order is passed:

(i) Application of Applicant No.1 is rejected.

(ii) In the event of the arrest of the Applicant No.2 in connection with C.R.No.44 of Roha Police Station, the Applicant No.2 shall be enlarged on bail subject to furnishing P.R.Bond in the sum

of Rs.50,000/- with one or two sureties in the like amount.

(iii) The Bail is granted subject to condition that the Applicant No.2 will attend the Roha Police Station on every Monday from 11.00 a.m. to 2.00 p.m. for a period of two months from today.

(vi) The anticipatory bail is granted subject to further condition that if the Applicant No.2 is holding any passport the same shall be surrendered to the Investigating Officer within a period of one week from today. If the Applicant No.2 is not holding any passport, an affidavit to that effect shall be filed in this Court within one week from today.

(v) The Bail is granted subject to condition that the Applicant No.2 shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the Police Officer/ Investigating Agency. The Applicant shall

not tamper with the prosecution evidence.

(vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(vii) This order will enure to the benefit of the Applicant No.2 only till charge sheet is filed. Thereafter he will be free to apply to the appropriate authority for appropriate relief.

(viii) Application is dispose of in above terms.

(xi) The parties to act upon an authenticated copy of this order.

9. At this stage the learned Counsel for the Applicants prays that some reasonable time be granted to the Applicant No.1 to surrender. The said prayer is opposed by the learned A.P.P. Considering the facts and circumstances of the case, the prayer stands rejected. The learned Counsel for the Applicants prays that the order passed against Applicant No.1 be stayed to enable the applicant No.1 to challenge the same in higher court. Prayer is rejected.

Judge.